

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

OSCAR CHAVEZ, Individually, and as
Personal Representative of the
ESTATE OF SANDRA CHAVEZ, deceased,

Plaintiff,

vs.

Cause No. 1:16-cv-110

METROPOLITAN PROPERTY AND
CASUALTY INSURANCE COMPANY,

Defendant.

**NOTICE OF REMOVAL TO THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

COME NOW Defendant Economy Premier Assurance Company, misnamed in the Complaint as Metropolitan Property and Casualty Insurance Company, (“Defendant”), by and through its attorneys of record, Butt Thornton & Baehr PC (James H. Johansen and Amy E. Headrick), and hereby files its Notice of Removal respectfully petitioning the Court, pursuant to, for the affirmation of removal of this action from the First Judicial District Court of Santa Fe County, State of New Mexico, to the United States District Court for the District of New Mexico on the following grounds:

1. Plaintiff filed this civil action against Defendant in the First Judicial District Court, County of Santa Fe, State of New Mexico, Case No. D-101-CV-2015-02695. Pursuant to D.N.M. LR-CIV 81.1, a copy of the Complaint, along with copies of all records and proceedings are attached hereto as **Exhibit A**.

2. According to the Complaint, filed December 18, 2015, Plaintiff is a citizen and resident of the County of Bernalillo, State of New Mexico. [Complaint at ¶1].

3. Economy Premier Assurance Company is a personal lines property and casualty insurance company and is the entity that issued the insurance policy relevant in this matter. Thus, Economy Premier Assurance Company is the proper Defendant in this matter.

4. Economy Premier Assurance Company, the proper Defendant in this matter, is a foreign corporation, incorporated in the state of Illinois with its principal place of business in the state of Illinois, thus Economy Premier Assurance Company is a citizen of the state of Illinois for the purposes of diversity citizenship under 28 U.S.C. § 1332.

5. The proper Defendant in this matter, Economy Premier Assurance Company, is a wholly owned subsidiary of Metropolitan Property and Casualty Insurance Company.

6. Metropolitan Property and Casualty Insurance Company, which is not a properly named Defendant in this matter, is a foreign corporation, incorporated in the state of Rhode Island with its principal place of business in the state of Rhode Island, thus Metropolitan Property and Casualty Insurance Company is a citizen of the state of Rhode Island for the purposes of diversity citizenship under 28 U.S.C. § 1332.

7. Defendant was served with the Complaint in this matter, through the New Mexico Superintendent of Insurance, effective January 15, 2016.

8. Complete diversity of citizenship exists between Plaintiff and Defendant.

9. The Complaint alleges four counts against Defendant, including (1) declaratory judgment; (2) UM/UIM Benefits/breach of contract; (3) bad faith; and (4) violations of the New Mexico Insurance Code. [Complaint at ¶¶61-83].

10. Plaintiff's claims purportedly arise out of the uninsured/underinsured motorist ("UM/UIM") coverage provisions in the automobile insurance agreement issued by Economy Premier Assurance Company to Plaintiff. Plaintiff made pre-suit demands in this case to settle the UM/UIM claims. On January 21, 2015, Plaintiff sent a demand totaling \$775,000.00, attached hereto as **Exhibit B**. On April 21, 2015, a new demand was sent, reducing the amount to \$700,000.00, attached hereto as **Exhibit C**.

11. Although Defendant does not admit Plaintiff has been damaged in any amount as the result of the actions of Defendant, the amount in controversy of Plaintiff's claim as indicated by the above-mentioned demands exceeds \$75,000.00. Therefore, the amount in controversy requirement of this Court is satisfied.

12. Plaintiff's Complaint is a civil action over which this Court has jurisdiction pursuant to 28 U.S.C. §1332 and which is removable by Defendant under the provisions of 28 U.S.C. §1441 in that:

a. The matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs; and

b. The matter in controversy is between citizens of different states.

13. This Notice of Removal was filed with this Court within thirty (30) days after Plaintiff's Complaint was served.

14. Defendant, immediately upon the filing of this original Notice of Removal, gave written notice of the filing as required by 28 U.S.C. §1446 (D) and filed a copy thereof with the Clerk of the First Judicial District Court, County of Santa Fe, State of New Mexico, the Court from which this action is removed.

15. This Notice of Removal is signed pursuant to Fed. R. Civ. P. 11.

WHEREFORE, Defendant Metropolitan Property and Casualty Insurance Company requests that the above-entitled action remain in this United States District Court for the District of New Mexico.

Respectfully Submitted,

BUTT THORNTON & BAEHR PC

/s/ James H. Johansen

James H. Johansen

Amy E. Headrick

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I hereby certify that on the 12th day of February, 2016,
I filed the foregoing electronically through the CM/ECF
system, which caused the following counsel to be served
by e-mail; and electronic means, as more fully reflected
on the Notice of Electronic filing:

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/s/ James H. Johansen

James H. Johansen